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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

AHMED ALY,

Plaintiff and Respondent,

v.

TAMER YOUSRI,

Defendant and Appellant.

B225097

(Los Angeles County  
Super. Ct. No. PC044086)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Barbara M. Scheper, Judge. Affirmed.

Tamer Yousri, in pro. per., for Defendant and Appellant.

George R. Hynick for Plaintiff and Respondent.

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Plaintiff Ahmed Aly prevailed in his action against defendant Tamer Yousri for violating the Uniform Fraudulent Transfer Act. (Civ. Code, § 3439 et seq.)<sup>1</sup> After awarding compensatory damages, the court found that defendant acted maliciously, warranting punitive damages. Defendant now challenges (1) the sufficiency of the evidence supporting the court’s fraudulent conveyance finding; (2) the court’s finding of a civil conspiracy; and (3) the punitive damages award. We affirm.

### **FACTS**

Plaintiff is a retiree, born in 1940. He has known brothers Tamer and Bassem Yousri since they were children, stemming from his close friendship with their father.<sup>2</sup> Plaintiff treated Bassem like a son, and Bassem called plaintiff “Uncle Ahmed.”

In mid-2006, Bassem solicited plaintiff to invest with a man named Peter Frommer, and attested to Frommer’s trustworthiness. Relying on Bassem’s assurances, plaintiff invested \$400,000. To do so, plaintiff took a loan of \$200,000 against his house (which he owned outright) and used his retirement savings. All but one of plaintiff’s checks were deposited into Bassem’s bank account, as Bassem admits.

Problems immediately arose with plaintiff’s investment. Plaintiff received two checks: one was returned for insufficient funds, and one was drawn on a closed account. Furious, he demanded the return of his investment money. Frommer told plaintiff, “As a matter of fact, I didn’t get any of your money. Your money is still with Bassem Yousri.” Plaintiff asked Bassem to return his money, both in person and by telephone, prompting Tamer to warn plaintiff, “I don’t want to see your face either at home or at the business . . . .” In November 2006, plaintiff hired a lawyer, and warned Bassem that he was going to file a lawsuit. Plaintiff’s attorney sent Bassem a letter on December 11, 2006, demanding the return of plaintiff’s \$400,000. When no repayment was made, plaintiff filed suit against Bassem in January 2007 (the Underlying Lawsuit).

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<sup>1</sup> All undesignated statutory references in this opinion are to the Civil Code.

<sup>2</sup> The Yousris will be referred to by their first names in this opinion.

During his deposition in the Underlying Lawsuit, Bassem falsely maintained that he gave plaintiff's investment money to Peter Frommer. However, when the Underlying Lawsuit went to trial in February 2008, Bassem admitted converting plaintiff's money to his personal use. Plaintiff prevailed on his claims for conversion, false promise, concealment, misrepresentation and breach of contract, and the jury awarded him \$375,000 in economic damages. Bassem cleaned out his bank account after losing the case, so plaintiff was unable to collect on the judgment in the Underlying Lawsuit.

In search of a way to collect, plaintiff conducted a debtor's examination of Bassem. Bassem testified that he purchased a residence on Bergamo Way in Northridge (Bergamo) in late summer 2006 for \$875,000, around the same time that he received plaintiff's investment money. Bassem spent \$550,000 after the purchase to beautify his home, adding a pool, waterfall, 50 trees, and a bonus room. In January 2007, within days of plaintiff's filing the Underlying Lawsuit, Bassem created a revocable trust and transferred Bergamo to the trust. The trust, in turn, sold Bergamo to Tamer while the jury tried the Underlying Lawsuit in February 2008. When he purchased Bergamo, Tamer was aware of the Underlying Lawsuit against Bassem. In addition, Bassem sold a house on Crystal Hills Lane (Crystal Hills) to Tamer for \$750,000 in May 2007, while the Underlying Lawsuit was pending.

The Yousris could not remember what Tamer paid for Bergamo. At trial in the Underlying Lawsuit in 2008, Tamer testified—with certainty—that he paid \$650,000, saying “I was getting a good deal.” At trial in this case in 2010, Tamer testified that he paid “just under a million” for Bergamo, then testified that he paid \$750,000, then reverted to “just under a million.” During his debtor's examination, Bassem testified that he sold Bergamo to Tamer for \$840,000; at trial, Bassem claimed that he “misspoke.” Records show a purchase price of \$999,990. Bassem agreed that he sustained a loss by selling Bergamo to Tamer one year after investing \$550,000 on improvements. For good measure, Bassem gave Tamer a \$42,000 “gift of equity” to help finance Tamer's purchase of Bergamo

Despite his purported sale of Bergamo to Tamer, Bassem continued to live in it. In 2008, Bassem was served with the debtor's examination papers at Bergamo. Plaintiff regularly saw Bassem's car parked at Bergamo, and saw him hauling trash containers to the curb. Bassem testified that he lived in Bergamo rent-free, after selling it to Tamer.

In sum, Bassem received—over the course of one year—\$100,000 from Peter Frommer; \$310,000 from the sale of Bergamo; \$150,000 from the sale of Crystal Hills; and \$225,000 from a home equity loan. He transferred \$260,000 of this money to a bank account in Switzerland in 2008, and then transferred it to Dubai. Bassem claims to have lost the money in Dubai, to have no income, and a net worth of a few thousand dollars.

Tamer defaulted on the loan for Crystal Hills, and it went into foreclosure. Though unable to pay for Crystal Hills, Tamer nevertheless purchased Bergamo (an even bigger residence) from Bassem. He made a few mortgage payments on Bergamo before defaulting. Bergamo was eventually foreclosed upon.

Bassem purchased a gas station/market called Pine Cove in 2005. He claims to have paid \$150,000 for it; however, documentation shows that he paid \$350,000. Tamer manages Pine Cove, from which he claims a gross monthly income of \$34,000. Income from Pine Cove is deposited into a bank account under the name of New Beginnings, a limited liability corporation that Bassem started in 2003. Tamer used money from the New Beginnings account to finance his purchase of Bergamo (to the tune of \$52,557) and to pay—however briefly—the mortgage on Bergamo.

At trial, Bassem claimed that he transferred 100 percent of his interest in New Beginnings to Tamer, in October 2005, for no consideration. However, in annual filings with the California Secretary of State, Bassem listed himself as the chief executive officer and owner of New Beginnings in 2005, 2006 and 2007. Tamer was not listed in those filings. In 2008, Tamer was listed as the chief executive officer, and Bassem was not listed at all. Bassem wrote himself a check for \$150,000 on the New Beginnings bank account in December 2006, a year after he supposedly transferred his entire interest in New Beginnings to Tamer. In 2007, Bassem continued to write thousands of dollars in checks on the New Beginnings bank account, payable to himself, his wife, his lawyer,

and others. Bassem admits that he used the New Beginnings bank account for his personal expenses, despite having no ownership interest in the corporation.

Plaintiff's life was turned upside down by Bassem's conduct. Plaintiff has no investment income because he gave his retirement money to Bassem; he has a mortgage in place of a home owned free and clear, and lacks sufficient income to refinance his loan; plaintiff's wife was forced to go to work for the first time in their marriage; and plaintiff's income from Social Security is not enough to support his family. He filed this lawsuit for fraudulent transfer against Tamer, Bassem, Bassem's revocable trust, and New Beginnings.

### **THE TRIAL COURT'S RULING**

The trial court described "the abundance of evidence" showing fraud as "overwhelming." The court found that New Beginnings is the alter ego of the Yousris, who "used it for both personal and business matters without regard to any corporate formalities." Though Bassem supposedly resigned from the company in October 2005, he continued to use the corporate bank account until December 2007, writing checks to himself, to his wife, and for personal expenses. The court characterized Bassem's testimony as "unbelievable" and his documents as fraudulent. Tellingly, Bassem submitted filings to the Secretary of State stating that he was chief executive officer/owner of New Beginnings in 2005, 2006, and 2007.

Bassem tried to "divest himself from apparent ownership of any assets, including New Beginnings, in order to frustrate the judgment" in favor of plaintiff in the Underlying Lawsuit. Bassem pretended to have transferred plaintiff's investment money to Peter Frommer. When plaintiff retained a lawyer to demand his money back from Bassem, Bassem quitclaimed Bergamo to a revocable trust. After spending half a million dollars to improve the property, using plaintiff's money, Bassem transferred title to Tamer, who did not know what he paid for Bergamo. After plaintiff prevailed in the Underlying Lawsuit, Tamer defaulted on Bergamo. The court found that Tamer "is lacking in credibility" as a witness.

The court found a fraudulent conveyance occurred, as well as a conspiracy to commit fraud, all to prevent plaintiff from collecting on the judgment in the Underlying Lawsuit. The court awarded plaintiff \$379,566, plus interest. The court also imposed punitive damages of \$250,000 each against Tamer, Bassem, and New Beginnings. Judgment was entered on April 29, 2010, and this timely appeal followed.<sup>3</sup>

## **DISCUSSION**

### **1. Violation of the Uniform Fraudulent Transfer Act**

#### *a. Overview*

The fraudulent conveyance statutes are liberally construed to prevent debtors from placing property beyond the reach of creditors. (*Fross v. Wotton* (1935) 3 Cal.2d 384, 390-391; *Vogel v. Sheridan* (1935) 4 Cal.App.2d 298, 305.) A transfer of property is fraudulent “whether the creditor’s claim arose before or after the transfer was made,” if the debtor acted with actual intent to hinder, delay or defraud the creditor, without receiving a reasonably equivalent value in exchange for the transfer, and the debtor (a) engaged in a transaction for which the debtor’s remaining assets were unreasonably small, or (b) reasonably should have believed that he would incur debts beyond his ability to pay as they became due. (§ 3439.04, subd. (a).) A transfer made by a debtor when the creditor has an existing claim against him is fraudulent if the debtor did not receive a reasonably equivalent value in exchange for the transfer and the debtor became insolvent as a result of the transfer. (§ 3439.05.)

The trier of fact may consider 11 factors to determine the debtor’s intent to defraud a creditor: “(1) Whether the transfer or obligation was to an insider. (2) Whether the debtor retained possession or control of the property after the transfer. (3) Whether the transfer or obligation was disclosed or concealed. (4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit. (5) Whether the transfer was of substantially all the debtor’s assets. (6) Whether the

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<sup>3</sup> Neither Bassem nor Bassem’s trust appealed from the judgment. The appeal of New Beginnings was dismissed for failure to file an opening brief.

debtor absconded. (7) Whether the debtor removed or concealed assets. (8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred. (9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred. (10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred. (11) Whether the debtor transferred the essential assets of the business to a lienholder who transferred the assets to an insider of the debtor.” (§ 3439.04, subd. (b).)

*b. The Trial Court’s Findings*

The issue of whether the defendant intended to hinder, delay or defraud presents a question of fact. “[I]ts proof is peculiarly dependent upon the circumstances which surround the questioned transaction, and the inferences which the trier of fact may reasonably draw therefrom.” (*Bulmash v. Davis* (1979) 24 Cal.3d 691, 699; *Menick v. Goldy* (1955) 131 Cal.App.2d 542, 548.) It is “entirely within the power of the trial court to weigh the evidence and judge [ ] the credibility of the witness[es] . . . .” (*Insurance Co. v. Bank of America etc. Assn.* (1936) 5 Cal.2d 288, 300.) We are bound by the trial court’s findings if they are supported by substantial evidence. (*Bulmash v. Davis, supra*, 24 Cal.3d at p. 699; *T W M Homes, Inc. v. Atherwood Realty & Inv. Co.* (1963) 214 Cal.App.2d 826, 842.) The trial court in this case found that evidence of intent to defraud is “overwhelming.” We agree.

The evidence shows that Bassem voluntarily transferred all of his assets to Tamer while the Underlying Lawsuit was pending. The assets of New Beginnings were transferred for no consideration, though the company generated monthly income of \$34,000 from its gas station operation in Pine Cove. Without any income and without any assets, Bassem rendered himself insolvent, with no prospect of satisfying his obligation to plaintiff.<sup>4</sup> Tamer knew about plaintiff’s lawsuit against Bassem at the time

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<sup>4</sup> An individual is insolvent if, at fair valuations, the sum of his debts is greater than all of his assets. (§ 3439.02, subd. (a); *Estate of Boggs* (1942) 19 Cal.2d 324, 329.)

these transfers were made. Both brothers used the New Beginnings corporate bank account as their personal piggy bank: it is obvious that “[t]he corporation was merely a matter of convenience and was only a corporation in form.” (*Vogel v. Sheridan, supra*, 4 Cal.App.2d at p. 304.)

Virtually all of the 11 “badges of fraud” are present here. (1) The transfers were made to an insider. Property transfers between close relatives may raise an inference of fraudulent conveyance. (*Menick v. Goldy, supra*, 131 Cal.App.2d at p. 547.) (2) The debtor retained possession or control of the property after the transfer. Bassem lived rent-free at Bergamo after selling it to Tamer, and continued to spend the assets of New Beginnings years after he supposedly transferred all of its stock to Tamer. (3) The transfer was concealed. Bassem filed reports with the Secretary of State in 2005, 2006, and 2007, showing that he was chief executive officer and owner of New Beginnings, even after he supposedly transferred the company to Tamer in 2005. (4) At the time the transfers were made, plaintiff had filed suit against Bassem. (5) The transfers comprised all of Bassem’s assets. (6) The debtor removed assets. Bassem removed \$260,000 from his bank account in 2008, and sent it to Switzerland and Dubai, despite his outstanding debt to plaintiff. (7) The consideration was inadequate. The assets of New Beginnings were transferred for no consideration even though Bassem paid \$350,000 to purchase Pine Cove, and Bergamo was sold for far less than Bassem had paid for it, including the half a million dollars in improvements he had just installed. (8) The transfers rendered Bassem insolvent. (9) The transfers occurred shortly before a substantial debt was incurred. Bergamo was transferred to Tamer while the Underlying Lawsuit was being tried, which ended in a verdict of \$375,000 in plaintiff’s favor.

Tamer asserts that Bergamo was purchased from Bassem’s revocable trust, which was not a “debtor” in the Underlying Lawsuit. The argument is meritless. When a settlor retains the power to revoke a trust, trust property is subject to the claims of the settlor’s creditors. (Prob. Code, § 18200; *Keitel v. Heubel* (2002) 103 Cal.App.4th 324, 337 [a judgment creditor may reach real property held in a revocable trust].) Thus, Bassem’s transfer of Bergamo into a revocable trust cannot defeat plaintiff’s claim as a judgment

creditor. The transfer was another cynical ploy by the Yousris in furtherance of their fraudulent scheme.

## **2. Evidence of Civil Conspiracy**

The doctrine of legal conspiracy applies to those who share a common plan or design to perpetrate a tort. “By participation in a civil conspiracy, a coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit of the conspiracy. [Citation.] In this way, a coconspirator incurs tort liability co-equal with the immediate tortfeasors.” (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511.) The coconspirator is jointly responsible for all damages ensuing from a tort, regardless of his degree of activity. (*Ibid.*) The elements of the doctrine are: (1) formation and operation of a conspiracy; (2) wrongful acts in pursuit of the conspiracy; and (3) resulting damage. (*Mosier v. Southern Cal. Physicians Ins. Exchange* (1998) 63 Cal.App.4th 1022, 1048.) A conspiracy may be proved with inferences drawn from circumstantial evidence, as direct evidence is usually unavailable. (*Peterson v. Cruickshank* (1956) 144 Cal.App.2d 148, 163.)

The trial court was presented with ample circumstantial evidence of a conspiracy between Bassem and Tamer to defraud plaintiff. Tamer knew about plaintiff’s claim against Bassem. Indeed, Tamer threatened plaintiff when plaintiff called and came by the Yousris’ house to demand the return of his money. Tamer willingly took title to all of Bassem’s assets—the assets of New Beginnings, Bergamo, and Crystal Hills. After leaching money from banks to pay Bassem for the purchases of the real property, Tamer defaulted on the mortgages, lost both properties in foreclosure and ensured that plaintiff had nothing to collect. Meanwhile, Bassem took the money from the sale of the properties and sent it abroad, also to ensure that plaintiff had nothing to collect. The brothers feigned a transfer of ownership of New Beginnings from Bassem to Tamer, only to file statements with the Secretary of State showing that the true ownership of the corporation remained at all times with Bassem. Nothing said by the Yousris during trial was credible. They are unrepentant liars. The trial court could easily find evidence of a conspiracy in this case.

### **3. Punitive Damages Award**

Exemplary damages are warranted in a tort action if the defendant is guilty of oppression, fraud, or malice. Malice refers to conduct that is intended to harm the plaintiff or despicable conduct carried on by the defendant with a willful and conscious disregard of the rights of others. Fraud refers to intentional misrepresentation, deceit or concealment of material facts with the intent to deprive a person of legal rights. (§ 3294.) The trier of fact decides whether to award punitive damages, and the amount of the award, taking into account the nature of the defendant's conduct, the defendant's wealth, and the plaintiff's actual damages. (*Gagnon v. Continental Casualty Co.* (1989) 211 Cal.App.3d 1598, 1602.)

The evidence at trial supports a finding that Tamer was the key to Bassem's plot to not only steal plaintiff's retirement money, but to ensure that plaintiff never recovered the money. Despite his lack of education and history of minimum wage jobs, Tamer took possession of two expensive parcels of real property belonging to Bassem. Without paying any consideration, Tamer took sole ownership of a valuable business that generates a significant income. All the while, Tamer knew of plaintiff's claim against Bassem. Tamer conspired with Bassem to abuse an elderly man's trust and destroy his life. The Yousris' conduct is malicious, despicable and reprehensible, and has no place in a civil society. Exemplary damages are well warranted in this case.

The record shows that Tamer enjoys income from the Pine Cove complex. In his 2008 loan application, Tamer declared a base monthly income of \$34,881; plus additional assets totaling over \$1.7 million. At trial, Tamer stated that the monthly income from Pine Cove over the last year was \$30,000. Despite this income, and despite both Tamer and Bassem removing hundreds of thousands of dollars from the New Beginnings bank account, Tamer claims that he makes \$10,000 per year. His testimony is ridiculous and unbelievable, and the trial court found that Tamer is not a credible witness. Some \$389,000 was deposited into the New Beginnings corporate account during the year before trial. As Tamer claims to be the sole owner of New Beginnings, he can be credited with the entire \$389,000. Tamer owns a residence on Sophia Avenue in North

Hills: he refused to say at trial what the purchase price was for the residence, or what his net worth is. Given Tamer's income from Pine Cove and his assets, a punitive damages award of \$250,000 is reasonable, taking into account the egregious facts of this case.

**DISPOSITION**

The judgment is affirmed.

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BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.